

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: March 7, 2001

Resolution No. M-4801

RESOLUTION**CONFIRMING STAFF'S AUTHORITY TO
SUSPEND THE EFFECTIVENESS OF ADVICE
LETTER FILINGS OF TARIFF CHANGES****SUMMARY**

Pursuant to Public Utilities Code Section 455 and General Order (GO) 96-A, certain tariff changes proposed by a utility and filed by advice letter may be put into effect after a specified notice period, unless suspended by the Commission. The purpose of this resolution is to confirm staff's authority to suspend on the Commission's behalf advice letters that may go into effect absent a suspension. This resolution applies to advice letters filed by gas, electric, telephone, water, sewer system, pipeline, and heat utilities. This resolution also ratifies staff's suspension of advice letters made prior to today.

BACKGROUND

Pursuant to Public Utilities Code Section 455 and GO 96-A, certain tariff changes proposed by a utility and filed by advice letter may be put into effect after a specified notice period,¹ unless suspended by the Commission. There are a number of reasons why, on occasion, the Commission cannot complete its review and disposition of these proposed tariff changes within the prescribed notice period. These reasons include, among others, the complexity of the issues raised by the advice letter filing, the need to resolve protests, the need to obtain further information from the utility in order to properly analyze the advice letter filing, and other procedural requirements imposed by statute.

On December 29, 2000, the Second Appellate District of the Court of Appeal of the State of California in *Southern California Edison Company v. Public Utilities Commission*, (2000) 185 Cal. App. 4th 1086, determined that a memorandum

¹ This Resolution uses the term "notice period" to refer to the period specified in Public Utilities Code Section 455 or General Order 96-A after which certain tariff changes may be put into effect by a utility.

account established via the advice letter process outlined in GO 96-A became effective upon the expiration of 40 days from the filing date unless suspended by the Commission. The logic of this decision is applicable to certain other advice letter filings as well. Since the volume of advice letter filings received by the Commission is substantial, it is impractical for the Commission itself to issue a decision suspending each advice letter on an individual basis. Therefore, the Commission affirms the staff's authority to issue such suspensions on the Commission's behalf.² The purpose of this resolution is to confirm staff's authority to suspend on the Commission's behalf advice letters that may go into effect absent a suspension. This resolution also ratifies staff's suspension of advice letters made prior to today.

DISCUSSION

The issuance of this resolution confirming staff's authority to suspend the effectiveness of advice letter filings is necessary in the Commission's fulfillment of its constitutional and statutory duties to regulate utilities, including reviewing advice letters in which utilities propose tariff changes.

Pursuant to Public Utilities Code Section 455 and GO 96-A, certain tariffs can become effective by operation of law after the expiration of a "notice period" unless suspended by the Commission.³ Pursuant to Section 455, the tariffs that may thus become effective by operation of law are those "not increasing or resulting in an increase in any rate." GO 96-A more specifically defines those tariffs that may become effective by operation of law as including: new tariffs for services or commodities not previously furnished, changed tariff sheets that do not increase or result in an increase in a rate, and those that decrease rates. GO 96-A more specifically defines those tariffs that may not become effective by operation of law as those increasing or resulting in an increase in rates, and those which will result in more restrictive conditions or a lesser service.

As discussed above, there are a number of reasons why the Commission may be unable to complete its review and disposition of an advice letter within the prescribed notice period. The likelihood that the Commission will need additional time to process advice letters has increased as the complexity of matters handled by advice letter has increased. In addition, a recent statutory amendment in many instances requires the Commission to publish a draft resolution disposing of an advice letter 30 days in advance of the Commission meeting at which the resolution will be put to a vote, in order to provide utilities and other interested

² The staff may, of course, reject advice letters that do not comply with the procedural or substantive requirements of GO 96-A.

³ Section 455 provides for a 30 day notice period, GO 96-A Section IV (B) generally provides for a 40 day notice period.

parties time to review and comment on the proposed Commission action. (See Public Utilities Code, Section 311, subd. (g); see also, Commission's Rules of Practice and Procedure, California Code of Regs., tit. 20, Section 77.7.) This statutory change makes the need for staff authority to suspend advice letters, while the Commission considers the merits of the advice letter filing, all the more important.

The full Commission generally meets only twice a month, and occasionally less often. The need to extend the processing period for an advice letter may only come to the attention of the Commission's staff relatively late in the notice period. One of the reasons why this is true is because the protest period does not end until 20 days after the filing date. (And the utility has an additional 5 business days to respond to any protest.) Due to these factors, it would often be difficult, if not impossible, for the full Commission to suspend an advice letter once the need for extended processing has become apparent and prior to the end of the notice period.

In short, Commission staff must be able to suspend advice letters that might otherwise go into effect at the end of the notice period. If not, the full Commission might be deprived of its ability to decide the merits of these advice letter filings before they are put into effect. Since many advice letter filings involve more complex and technical issues than in the past, it is essential that the Commission have time to review them, especially since they may have important implications for consumers and competitors. Accordingly, this resolution confirms staff's authority to take this procedural step of suspending the effectiveness of an advice letter. This resolution also ratifies staff's suspensions of advice letters made prior to today, including, but not limited to, those listed in Ordering Paragraph No. 4.

The following shall be the procedure for staff's suspension of advice letters submitting tariff changes. Notice of the initial suspension shall be given, in writing, no later than the date the advice letter otherwise could become effective by operation of law. Notice may be communicated by fax, mail, or e-mail. The initial suspension is effective as of the date when the notice of suspension is sent. The Directors of the Energy, Telecommunications, and Water Divisions, or their designated representatives, may suspend an advice letter that is filed with their respective divisions. As necessary, the Executive Director, or his or her designee, may also suspend an advice letter. The period of suspension shall be limited, as specified in Public Utilities Code Section 455. Staff may suspend the advice letter for an initial period of no more than 120 days beyond the time when it would otherwise go into effect, and if the Commission has not acted by the end of the first suspension period, the advice letter will automatically be suspended for an additional period of 180 days. Suspensions are terminated by a Commission order regarding the advice letter, or the expiration of the final suspension period,

whichever date is earlier. The notice of suspension shall state the length of time for which the advice letter is being suspended, and the reasons for the suspension.

Generally, a suspension should not be required where a utility expressly agrees not to put an advice letter into effect at the end of the notice period, or until the Commission acts. Similarly, where a utility specifically requests a later effective date than the one provided for in Section 455 or GO 96-A, it should not be necessary for staff to suspend the advice letter to prevent it from becoming effective before the requested effective date. Nonetheless, as appropriate, staff may suspend such advice letters to prevent them from becoming effective on the later requested effective date.

Although we affirm staff's suspension authority, we wish to make clear that we do not intend that suspensions result in unnecessary delays in staff's processing of advice letters. Indeed, although we are affirming staff's authority to suspend advice letters for the maximum statutory period, we expect the full period to be needed only in rare instances.

We expect staff to: 1) suspend advice letters for the minimum period anticipated to be necessary for the required investigation of the advice letter; 2) process suspended advice letters as rapidly as practical; 3) keep division directors fully informed of the processing progress; 4) notify Commissioners of any suspension or extension thereof; and 5) for those suspended advice letters not already disposed by staff or Commission action, prepare a draft resolution addressing each such suspended advice letter, in time for our consideration at a Commission meeting prior to the expiration of the initial suspension period. These procedures will keep the Commissioners informed as to which, if any, advice letters are nearing the end of their initial suspension period. By these requirements, we will ensure that staff expeditiously processes suspended advice letters in a manner that allows us to take action as promptly as possible.

The draft resolution in this matter was noticed to the public on the Commission's Daily Calendar from January 9, 2001 to January 29, 2001, in accordance with Public Utilities Code Section 311(g) and Rule 77.7 of the Commission's Rules of Practice and Procedure. The draft resolution was also circulated by mail to all parties on the service list for Rulemaking (R.) 98-07-38 (GO 96-A Rulemaking), a proceeding involving proposed amendments to General Order 96-A.

Comments

Comments were filed by the Commission's Office of Ratepayer Advocates (ORA); San Gabriel Water Company (San Gabriel Water); Southern California Edison Company, joined by Southern California Gas Company, San Diego Gas &

Electric Company, and Pacific Gas and Electric Company (collectively, Energy Utilities); Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, The Ponderosa Telephone Company, and Sierra Telephone Company (collectively, Smaller LECs); Roseville Telephone Company (Roseville); Citizens Telecommunications Company of California Inc., Citizens Telecommunications Company of the Golden State, Citizens Telecommunications Company of Tuolumne and Citizens Telecommunications Company (collectively, Citizens); California Association of Competitive Telecommunications Carriers (CALTEL); Pacific Bell Telephone Company (Pacific); the California Water Association (CWA); Equilon Pipeline Company (Equilon); and Verizon.

The comments may be summed up as follows:

1. The Commission cannot delegate to staff authority to suspend advice letters, because Public Utilities Code Section 455 references suspensions by the Commission, not the Commission's staff. (San Gabriel, Energy Utilities, Pacific, Smaller LECs/Roseville, CWA, CALTEL)
2. Delegation to staff, if permitted at all, should go no further than the Executive Director, and the division directors. (San Gabriel)
3. The Draft Resolution does not provide adequate guidelines for staff suspensions of advice letters. (San Gabriel, Energy Utilities, Pacific, Smaller LECs/Roseville, CALTEL, Verizon)
4. The absence of guidance to staff could lead to arbitrary and discriminatory results, if some advice letters were suspended while competitive advice letters were allowed to go into effect. (Citizens)
5. The draft resolution should require that staff notify the filer of the reasons for a suspension and/or require the findings and conclusions needed for a reviewing court to assess a suspension action and determine if the Commission acted arbitrarily and capriciously. (San Gabriel, Pacific, ORA)
6. Public Utilities Code Section 455 allows suspensions only where there is a need to allow for hearings. (Smaller LECs/Roseville)
7. The suspension periods in the draft resolution are too lengthy, and should be limited to either the time necessary to allow for the Commission to review the advice letter, or simply for a shorter time period. (San Gabriel, Smaller LECs/Roseville)
8. The draft resolution does not apply to oil pipeline corporations, since specific procedures for such pipelines are provided in Public Utilities Code Section 455.3 and incorporated into GO 96-A Section VI. (Equilon)
9. It is not clear whether, after a suspension ends, the tariff automatically goes into effect, or is automatically rejected. (Verizon)

10. While statutory restrictions on Commission action, such as Public Utilities Code Section 311 (g)(1) may require staff to be authorized to issue initial suspensions, these time pressures do not apply to second round suspensions, which should be issued only by the Commission. (ORA)
11. The competitive environment requires more certainty than that afforded by the Draft Resolution, since billing changes require lead time to adjust computer programs, circulate billing inserts, etc. (Verizon)
12. Advice letter suspension rule changes should be addressed in the GO 96-A Rulemaking. (Citizens, Verizon)
13. Where suspensions are lengthy, tariffs should be allowed to go into effect, subject to refund, pending final Commission review, since additional review time does not mean tariff will be changed, or changed substantially, and delay would harm utility and/or customers. (San Gabriel)
14. The Commission should not retroactively ratify unauthorized suspensions by staff. (Energy Utilities)
15. The draft resolution should be limited to ratifications of prior suspensions of advice letters, if that is its real purpose. (San Gabriel)

Response to Comments

1. Response to Comment 1

Nothing in the comments we received convinces us that it is unlawful or unwise for the Commission to affirm the authority of staff to suspend advice letters in appropriate circumstances to allow us time to properly review the advice letters before they become effective. Given the 20 day period set forth in GO 96-A for protesting advice letters, the 5 day period set forth in GO 96-A for replies to protests, the fact that the Commission generally meets only twice a month, and the volume of advice letters the Commission processes, it is simply not practical for the Commission to individually suspend each advice letter requiring further review. In affirming staff's authority to take the procedural step of suspending advice letters to allow proper review by the Commission, we preserve, rather than abdicate, our power to make discretionary decisions regarding the subject of an advice letter in a responsible manner.

Commenters wrongly assume that because a number of judicial decisions emphasize the inability of public agencies to delegate discretionary decision-making authority, such decisions limit the Commission's authority to suspend advice letter tariffs.⁴ First, we note that many of these same decisions find that "it is equally well established that ministerial or administrative functions may be

⁴ E.g., *California School Employees Assn. v. Personnel Commission* (1970) 3 Cal. 3d 139.

delegated to subordinates or agents.” (*Sacramento Chamber of Commerce v. J.H. Stephens* (1931) 212 Cal. 607⁵; see also, *California School Employees Assn.*, *supra*, 3 Cal.3d at 144.)

The distinction between ministerial and discretionary action is often given undue emphasis since even the most ministerial of actions involves some degree of judgment or discretion. As the California Supreme Court noted in *Johnson v. State of California* (1968) 69 Cal. 2d 782, 788: “[w]e follow equally sound precedent ... in rejecting the state’s invitation to enmesh ourselves deeply in the semantic thicket of attempting to determine, as a purely literal matter, ‘where the ministerial and imperative duties end and the discretionary powers begin....[I]t would be difficult to conceive of any official act, no matter how directly ministerial, that did not admit of some discretion in the manner of its performance, even if it involved only the driving of a nail.’ (*Ham v. County of Los Angeles* (1920) 46 Cal.App.148, 162 [other citations omitted])” At a minimum, “[j]udgment must often be exercised by ministerial officers in determining whether or not the facts exist which authorize them to act.” (*Holley v. County of Orange* (1895) 106 Cal. 420, 424-425.)

Here, we merely direct staff to perform the procedural, ministerial task of issuing suspension notices in appropriate circumstances that we have in the exercise of our discretion specified in advance. We are free to adopt any reasonable procedure for implementing our suspension authority.

Second, we note that a suspension of an advice letter to allow for additional Commission review is a procedural, rather than substantive, action. The Commission has long authorized the Executive Director to take procedural actions on behalf of the Commission. In D.98-12-075 (1998 Cal. PUC LEXIS 1018, at p. 32), for example, we stated in response to allegations that we improperly delegated authority to issue temporary restraining orders:

While we agree that final decisions of the Commission require an affirmative vote of the Commission in the presence of a quorum, this requirement does not preclude the commission from making a reasonable delegation of authority to other officers of the Commission. For example, the Commission has delegated to its

⁵ In *Sacramento Chamber of Commerce*, for example, the city charter conferred upon the City Council authority to appropriate and spend public funds. The City Council then contracted with an administrative agent to perform the ministerial function of expending certain funds to further the purposes for which they were appropriated. The Court found that the “charter provision does not assume to prescribe any method or procedure for the disbursement of the funds ..., and the city is free to adopt any usual, reasonable and adaptable means for this purpose.” (*Id.*, 212 Cal. 611.)

Executive Director the authority to grant extensions of time to comply with Commission orders (Rule 48(b) of the Commission's Rules of Practice and Procedure). This delegation is a practical necessity, since requests for time extensions often must be processed very quickly. Parties face potential sanctions for noncompliance if they fail to receive an extension on a timely basis. By its very nature, a temporary restraining order is a quick response that is applied when timing is a critical factor. In some instances, it may be necessary to issue a temporary restraining order to preserve the Commission's decision-making options.

As is the case with temporary restraining orders, notices suspending advice letters must sometimes be issued very quickly, to preserve the Commission's decision-making options. As is also the case with temporary restraining orders, advice letter suspensions are procedural actions to preserve decision-making options, rather than substantive discretionary actions in and of themselves. Although staff may have authority to suspend advice letters so that we may review them more thoroughly, we retain full control over any substantive discretionary decision associated with any advice letter filing.

If we refrained from affirming staff's authority to take the ministerial, procedural step of suspending advice letters, and allowed advice letters to become effective by default but only when we were unable to suspend them within the notice period, there would be an unnecessary lack of uniformity in the setting of new rates and the offering of new services.

The fact that an advice letter may become effective by default would not, of course, render us powerless to act on the substance of the advice letter. Section 455 provides that certain tariff changes that are not suspended become effective "upon the expiration of 30 days from the time of filing ... or a lesser time as the commission may grant, *subject to the power of the commission, after a hearing, to alter or modify them.*" Rather than permitting advice letters to become effective by default, and then holding hearings to consider whether it is necessary to "alter or modify them," we find it more sensible and appropriate to affirm staff's authority to suspend advice letters so they may be reviewed before the proposed tariffs become effective. Our approach sidesteps continuity problems that may result if tariffs go into effect by default, and then are thereafter altered or modified by the Commission after a hearing.

The act of suspending advice letters is a procedural step, rather than a substantive determination on the merits. The only decision to be made by staff prior to the suspension of an advice letter is to determine whether the advice letter is of such a nature as to require additional time to gather information and investigate whether

the proposed tariffs should be approved or not. This decision is essentially a ministerial, procedural action. We retain full discretion to rule on the merits of advice letters.

We will address some of the concerns expressed by commenters by providing additional specific guidance to our staff to make even more clear that our affirmation of staff's suspension authority represents an affirmation of authority to take limited ministerial actions, rather than a delegation of our discretionary authority. Finally, we note that the procedures adopted in this resolution are subject to change in decisions issued in the GO 96-A Rulemaking or any other appropriate Commission proceeding. For the above reasons, we do not believe that our resolution affirming staff authority to suspend advice letters constitutes an improper delegation of the Commission's authority.

2. Response to Comment 2

We are not persuaded of the need to limit authority to suspend advice letters to the Executive Director or division directors. We have confidence that these individuals are capable of appropriately designating staff to carry out the suspension process in a proper manner, as authorized in the draft resolution.

3. Response to Comment 3

We agree that additional guidance to staff would be helpful, and will modify the draft resolution to provide such guidance. As a number of commenters point out, a proceeding considering modifications to GO 96-A is currently underway. The guidelines set forth in this resolution are subject to modification in that proceeding.

4. Response to Comment 4

Commenters correctly note that if some advice letters are suspended, while similar advice letters by competitors are not, discrimination could result. We therefore direct staff to treat similar advice letters in a consistent manner.

5. Response to Comment 5

We do not agree that a ministerial suspension needs findings and conclusions to allow for judicial review. However, we do agree that, as a matter of sound administration, staff should notify the filers of suspended advice letters, and the public, of the reason for and scope of the suspension. We will direct that staff advice letter suspension notices be provided in writing to the advice letter filer, should be posted on the Commission's web site Daily Calendar, and should state

clearly the dates the suspension begins and ends, the specific grounds for the suspension, and other relevant information. Suspensions become effective on the date issued by fax, mail, or e-mail, whether or not the notice has on that date been posted on the Daily Calendar.

6. Response to Comment 6

Section 455 provides, in pertinent part:

[W]henever [certain tariffs are] . . . filed with the Commission, it may . . . enter upon a hearing concerning the propriety of the [tariff] Pending the hearing, and the decision thereon the [tariff] . . . shall not go into effect. . . . [T]he period of suspension . . . shall not extend beyond 120 days . . . unless the Commission extends the period of suspension for a further period not exceeding six months. On the hearing the commission shall establish the [tariffs] . . . which it finds to be just and reasonable.

All [such tariffs] . . . not so suspended shall become effective upon the expiration of 30 days

Commenters argue that the Commission can only suspend a tariff filing upon a determination that a hearing is required to determine the propriety of a proposed tariff. Commenters seem to assume that the hearing referenced in Section 455 is a hearing in an application proceeding.

Commenters' view of the kind of hearing referenced in Section 455 is too narrow. They do not explain why further processing of the advice letter (and any protests) does not constitute the "hearing" contemplated by Section 455. Section 455 does not require an "evidentiary" hearing. Even in the case of formal proceedings, many issues (or even whole proceedings) are decided on the basis of written submissions. We do not see why written processes cannot constitute the "hearing" contemplated by Section 455.

Unless tariffs subject to Section 455 are suspended, they may become effective 30 days from the time they are filed with the Commission.⁶ We do not agree with

⁶ Public Utilities Code Section 455 only governs filings that do not increase or result in an increase in any rate. GO 96-A more specifically defines those tariffs that may become effective by operation of law as including: new tariffs for services or commodities not previously furnished, changed tariff sheets that do not increase or result in an increase in a rate, and those that decrease rates. GO 96-A more specifically defines those tariffs that may not become effective by operation of law as those increasing or resulting in an increase in rates, and those which will result in more restrictive conditions or a lesser service. Such tariffs do not go into effect in the absence of a Commission decision. No suspension need be issued to preclude such filings from going into effect before the Commission has had time to review the filings adequately.

commenters that advice letters may only be suspended if a formal application proceeding and associated hearings are required, and believe that such a narrow reading of Section 455 is neither necessary nor appropriate.

Indeed, many unnecessary procedural steps would be taken if a more formal or evidentiary hearing were required in every case in which the Commission needed further information to complete the processing of the advice letter. If we required an evidentiary hearing in conjunction with each suspension, the time needed for such hearings would inevitably delay for long periods advice letters that would otherwise be ready for implementation in fairly short order. We do not believe that automatically requiring evidentiary hearings or formal proceedings would serve the interests of utilities, staff, the Commission, or the public.

7. Response to Comment 7

We understand that San Gabriel and others consider the suspension periods in the draft resolution to be too lengthy, and want the periods shortened or limited to the time needed for the Commission to review advice letters. We agree that suspensions should be no longer than necessary.⁷ Because sometimes staff and the Commission will need the full suspension time authorized by Public Utilities Code Section 455 to adequately review an advice letter filing, however, we decline to shorten the two suspension periods on a generic basis.

We will clarify our approach in the following manner. If the first suspension period of up to 120 days ends before the Commission issues an order resolving the issues raised in the advice letter, then there will be an automatic suspension for a second period, of 180 days. Prior to the expiration of the first suspension period, staff shall issue a notice of the second suspension to the advice letter filer, by fax, e-mail, or letter. The notice shall set forth the dates the suspension begins and ends, and the reasons for the suspension. The second suspension period becomes effective at the end of the first suspension period, if no Commission order has been issued, whether or not staff has issued notice of the second suspension period. Suspensions terminate upon the issuance of a Commission order addressing the issues raised in the advice letter, or at the expiration of the two suspension periods described in this resolution.

8. Response to Comment 8

We agree with Equilon that certain timing provisions of the draft resolution do not apply to certain tariff filings of oil pipeline corporations, since specific procedures

⁷ We note that in many cases, suspensions may not be necessary at all if advice letter filers provide adequate information to staff in the first place.

for such pipeline corporations are provide in Public Utilities Code Section 455.3 and incorporated into GO 96-A, Section VI. Therefore, with regard to oil pipeline corporations, the provisions of Public Utilities Code Section 455.3 and GO 96-A Section VI supersede any conflicting provisions of this resolution.

9. Response to Comment 9

This resolution makes no change to the law concerning whether a suspended advice letter goes into effect at the end of the suspension period, if the Commission has not acted by that date. The discussion section of this resolution describes which kinds of tariff changes may become effective by operation of law, and which cannot. However, in some situations a utility may claim automatic effectiveness for a tariff change, even though, upon closer examination, it turns out that the tariff change does not qualify. Similarly, in some instances it may not be immediately apparent, for example, whether or not a particular advice letter will result in an increase in rates or a lesser service. In these kinds of situations, staff may suspend the advice letter, pursuant to the Guidelines set forth in this resolution, and thus preclude a claim of automatic effectiveness that might otherwise be made. The act of suspending such an advice letter, however, does not convert an advice letter that is otherwise ineligible for automatic effectiveness into one that qualifies for such treatment.

The discussion section of this resolution also describes situations where express statements or agreements by a utility will prevent tariff changes, that otherwise could be come effective by operation of law, from going into effect. In these situations, the advice letter will not go into effect even though the suspension period may have expired without formal Commission action. For example, if a utility expressly agrees that its advice letter will not go into effect at the end of the suspension period, but that the utility will instead await full Commission action on its advice letter, then the advice letter will not automatically become effective at the end of the suspension period.

In short, if a tariff change actually qualifies for automatic effectiveness, and the utility has not made any express statements or agreements to the contrary, then the tariff change will automatically go into effect at the end of the suspension periods, if the Commission has not acted on the advice letter before then. On the other hand, if the tariff change does not qualify for automatic effectiveness, or the utility has agreed to await action by the full Commission, or has otherwise expressly stated or agreed not to put the tariff into effect at the end of the suspension period, then the tariff change will not go into effect upon the expiration of the suspension periods.

10. Response to Comment 10

We agree with ORA that the time pressures requiring staff authority to initially suspend advice letters may be less critical with regard to the second suspension period discussed in the draft resolution. Nonetheless, we decline ORA's recommendation that second round suspensions be issued by the Commission, rather than staff. The Commission's workload, and the procedural requirements attendant on the drafting of a resolution prior to Commission action, lead us to conclude that it is preferable to establish guidelines for the initiation of a second suspension period. If the Commission has not issued a decision addressing the issues raised in the advice letter prior to the end of the first suspension period, the suspension period will be automatically extended until the Commission issues a decision, or until 180 days after the end of the first suspension period, whichever is earlier.

11. Response to Comment 11

We sympathize with many of Verizon's concerns regarding the need for procedural certainty, and the lead times required to adjust computer billing programs, circulate billing notices, and so on. Given the number of variables involved, however, we cannot guarantee that we will resolve advice letter issues by the date requested in an advice letter. We do note that the key to a prompt Commission response to an advice letter often lies with the provision of adequate information to staff in the first place. This is, for the most part, an issue over which filing utilities have a great deal of control. While we decline to guarantee that the Commission will resolve all advice letters by the requested effective date, we reaffirm our intention to process advice letters as rapidly as practical.

12. Response to Comment 12

Our adoption of this resolution is not a substitute for the GO 96-A Rulemaking. Indeed, we have recently circulated a draft decision in that proceeding for an extended comment period. Any element of the new general order to be issued in that proceeding will supersede any conflicting language or policies set forth in this resolution.

13. Response to Comment 13

San Gabriel correctly notes that the additional review time afforded by a suspension does not necessarily mean that the proposed tariffs will be changed, or changed substantially, and that delay in implementing proposed tariff changes may have a negative impact on utilities and, in some cases, their customers. We believe, however, that establishing a system whereby all new tariffs not increasing rates go into effect while the advice letter in which they are included is reviewed

by the Commission is not appropriate.⁸ If, after our review, we decide the proposed tariffs should be rejected, the utility would face the burden of having had to change its billing system once to adjust for the new tariffs, and a second time to undo the adjustment.

We will instead recommend that utilities anxious to see new tariffs take effect promptly take all the steps necessary to provide staff with the information required for a comprehensive analysis of the proposed tariff, its relationship to statutory provisions, regulations, related tariffs, and rules and orders of this Commission, and any other pertinent information. If speed is a priority, the utility should so note in the advice letter filing. By providing adequate information in the beginning, and emphasizing timing concerns, utilities can assist our staff, and the Commission as a whole, to process their proposals promptly.

14. Response to Comment 14

We find it wholly appropriate to affirm past staff suspensions of advice letters, as set forth in the draft resolution. We believe these past staff suspensions were appropriate, and made necessary by timing interactions of Public Utilities Code 455 and GO 96-A. Without such past staff suspensions, a number of advice letters would have become effective before the Commission had had an opportunity to review them properly. Further, although one or more commenters may disagree with past staff suspension decisions, we are perfectly within our rights to reaffirm those suspensions now. Staff's prior suspensions now become our own, effective nunc pro tunc as of the date the suspensions were initiated by staff. (See, e.g., *California School Employees Assn.*, *supra*, 3 Cal.3d at 145.)

15. Response to Comment 15

This resolution is intended to provide guidance for future suspensions by staff, as well as to ratify past staff suspensions. Thus, we will not, as San Gabriel recommends, limit the resolution to the ratification process.

Guidelines for Rejection and Suspension of Advice Letters, and Staff Notification of Suspensions

We understand the commenters' desire that suspensions be limited in time, and that additional guidance be provided regarding staff's processing of advice letters. We will, therefore, list a number of circumstances in which advice letters must be

⁸ Since requests for approval of rate increases, or tariff changes that may result in rate increases, are not subject to Section 455, we see no need to consider establishing a process by which rate increases may go into effect on a default basis, subject to possible future refunds.

suspended. In addition, we will describe in more detail the elements to be included in notices suspending advice letters.

Again, we note that the guidelines outlined in this resolution are subject to modification in the GO 96-A Rulemaking, or in any other appropriate Commission proceeding.

1. When advice letters request later effective dates

In the following circumstance, advice letters do not become effective by operation of law and no suspension is necessary.

When an advice letter requests a specific effective date that is later than the date the advice letter might otherwise become effective by operation of law, the advice letter may not become effective until the requested effective date at the earliest. As appropriate, staff may suspend such advice letters under the other guidelines of this resolution to prevent them from becoming effective on the later requested effective date.

2. When staff must suspend advice letters

Staff shall suspend advice letters for any of the following reasons:

- a. When additional information or time is needed for staff to analyze the advice letter adequately. E.g., if the advice letter is excessively vague; does not include sufficient information to determine the impact of the advice letter on rates or the relationships between the advice letter proposals and other tariffed services (whether of the filing utility, or of other utilities); does not explain how the proposed rates or services implement or comply with statutory requirements, regulations, and/or Commission orders; or through the absence of information raises similar issues; or the complexity of the advice letter (and supporting information) requires more time for analysis, staff may request any additional information needed from the utility filing the advice letter, and suspend the advice letter as necessary to allow time for the receipt of the information and/or the review of the advice letter.
- b. When a timely protest is received, and additional time is needed to investigate whether the advice letter proposals should go into effect. Not all protests will result in the suspension of an advice letter. For example, if a protest raises issues that have been explicitly addressed in a statute or regulation, or in a general order, decision, resolution, or other order or ruling of the Commission, staff may not find it

necessary to suspend the advice letter in order to make time to address the protest and investigate whether the advice letter proposals should go into effect.

- c. When an advice letter requests an affirmative decision by the Commission. Such a suspension is intended to make clear that the advice letter will not go into effect until the Commission takes action regarding the advice letter. Such a suspension is not necessary when a utility expressly agrees that the advice letter will not go into effect until the Commission takes action regarding the advice letter, however, suspensions may be made to avoid any potential misunderstanding.
- d. When an affirmative decision by the Commission is otherwise necessary, for example, where a compliance advice letter does not meet the requirements of the Commission decision or order requiring the filing of the compliance advice letter and further direction from the Commission is needed, or where an exercise of the Commission's discretion is necessary to determine whether the advice letter should be approved or rejected.
- e. These grounds are not exclusive. Staff may also suspend advice letters on grounds that are similar to the grounds specifically listed above, as the public interest requires.

3. Timing of suspensions

- a. If an advice letter is suspended by staff, the initial suspension period will run for no more than 120 days after the date on which the advice letter would otherwise become effective by operation of law, or until the Commission acts on the advice letter, whichever is earlier.
- b. If, by the end of the first suspension period the Commission has yet to issue an order addressing the advice letter, a second suspension period of 180 days will automatically commence. This second suspension period ends when the Commission issues an order regarding the advice letter, or when the 180 day suspension expires, whichever is earlier.

4. Notice Requirements

- a. Any time staff initiates the suspension of an advice letter, staff, shall notify the filer of the suspension and post notice of the suspension

on the Commission's Daily Calendar. The notice may be issued by fax, mail, or e-mail.

- b. Initial suspensions become effective on the date the notice is issued to the filer of the advice letter, whether or not the notice has on that date been posted on the Commission's Daily Calendar.
- c. Suspension notices shall include: 1) the dates the suspension begins and ends; 2) the grounds for the suspension; and 3) in the case of initial suspensions, notice that the suspension will automatically be extended for an additional 180 days if the Commission has not issued an order regarding the advice letter by that date the first suspension period ends.
- d. Where an initial suspension period is about to expire prior to Commission action regarding an advice letter, staff shall issue a notice of the additional 180 day suspension period that will automatically become effective if the Commission has not issued an order regarding the advice letter prior to the end of the first suspension period. Notice of any suspension extension shall be issued by fax, mail, or e-mail and posted on the Commission's Daily Calendar. The notice of the automatic second suspension period is dictated by courtesy, and is not required before the second suspension period may become effective.

FINDINGS OF FACT

- 1. It is necessary to the Commission's regulation of utilities that staff has the authority to take the procedural step of suspending advice letters that propose tariff changes that could otherwise go into effect automatically.
- 2. There are a number of reasons why, on occasion, the Commission cannot complete its review and disposition of these proposed tariff changes within the prescribed notice period, including but not limited to, the complexity of the issues raised by the advice letter filing, the need to resolve protests, the need to obtain further information from the utility in order to properly analyze the advice letter filing, and other procedural requirements imposed by statute, such as Public Utilities Code Section 311(g).
- 3. If Commission staff cannot suspend advice letters that a utility might otherwise claim would go into effect at the end of the notice period, the full Commission might be deprived of its ability to decide the merits of these advice letter filings.

CONCLUSIONS OF LAW

1. Commission staff has the authority to suspend the effectiveness of advice letters.
2. Since staff has this authority to take the procedural step of suspending the effectiveness of an advice letter, staff's suspensions of advice letters prior to today, including, but not limited to, those listed in Ordering Paragraph No. 4 were proper.
3. The Directors of the Energy, Telecommunications, and Water Divisions, or their designated representatives, may suspend advice letters that are filed with their respective divisions. The Executive Director, or his or her designee, may also suspend advice letters.
4. If an advice letter is suspended by staff, the initial suspension period should run for no more than 120 days after the date on which the advice letter would otherwise become effective by operation of law, or until the Commission acts on the advice letter, whichever is earlier.
5. If, by the end of the first suspension period the Commission has yet to issue an order addressing the advice letter, the suspension period should be automatically extended for an additional 180 days. This second suspension period should end when the Commission issues an order regarding the advice letter, or when the 180 day suspension expires, whichever is earlier.
6. Written notice of a suspension should be issued by fax, mail, or e-mail, no later than when the advice letter otherwise could become effective by operation of law, and the notice of initial suspension should be effective as of the date the notice is issued.
7. Any time staff initiates the suspension of an advice letter, the advice letter filer should be notified by fax, mail, or e-mail, and notice of the suspension shall be posted on the Commission's Daily Calendar. Initial suspensions should become effective on the date specified in the notice provided to the filer of the advice letter, whether or not the notice has on that date been posted on the Commission's Daily Calendar.
8. Where an initial suspension period is about to expire prior to Commission action regarding an advice letter, staff should issue a notice of the additional 180 day suspension period that will automatically become effective if the Commission has not issued an order regarding the advice letter prior to the end of the first suspension period. Notice of any suspension extension should be

issued by fax, mail, or e-mail and posted on the Commission's Daily Calendar. The notice of the automatic second suspension period is dictated by courtesy, and is not required before the second suspension period may become effective.

9. Suspension notices should include: 1) the dates the suspension begins and ends; 2) the grounds for the suspension and 3) in the case of an initial suspension, notice that the suspension will automatically be extended for an additional 180 days if the Commission has not issued an order regarding the advice letter by the date the first suspension period ends.
10. When an advice letter requests a specific effective date that is later than the date the advice letter might otherwise become effective by operation of law, the advice letter may not become effective until the requested effective date at the earliest. As appropriate, staff may suspend such advice letters under the other guidelines of this resolution to prevent them from becoming effective on the later requested effective date.
11. A suspension should not be required where a utility expressly agrees not to put an advice letter into effect until the Commission acts; this agreement need not be in writing. Where a utility specifically requests, or agrees to, a later effective date than the one provided for in Public Utilities Code Section 455 or GO 96-A, it should not be necessary for staff to suspend the advice letter to prevent it from becoming effective before the requested, or agreed to, effective date.
12. Although staff's suspension authority is affirmed, suspensions are not intended to result in unnecessary delays in staff's processing of advice letters.
13. Although staff has the authority to suspend advice letters for the maximum statutory period, the full period should be needed only in rare instances.

ORDER

1. Commission staff's authority to suspend the effectiveness of an advice letter filing that proposes tariff changes is hereby confirmed, and in the future shall be exercised in the manner set forth in this resolution, including, but not limited to, Guidelines 1 and 2 set forth above.
2. This resolution applies to advice letters filed by gas, electric, telephone, water, sewer system, pipeline, and heat utilities, except to the extent inconsistent with Public Utilities Code Section 455.3. Staff shall have authority to suspend rate changes of oil pipeline corporations to the extent the Commission has such authority under Public Utilities Code Section 455.3 (b)(3).

3. In order to avoid discrimination, staff shall treat similar advice letters in a consistent manner.
4. Staff's suspensions prior to today are hereby ratified. These suspensions include, but are not limited to, Edison's Advice Letter Numbers 1461-E, 1462-E, and 1499-E, and Pacific Gas and Electric Company's Advice Letter Numbers 2018-E, 2019-E, 2020-E, 2057-E and 2072-E.
5. The Directors of the Energy, Telecommunications, and Water Divisions, or their designated representatives, may suspend an advice letter that is filed with their respective divisions. The Executive Director, or his or her designee, may also suspend an advice letter.
6. The first suspension period initiated by staff shall run for no more than 120 days after the date on which the advice letter would otherwise become effective by operation of law, and may be terminated earlier if the Commission issues an order regarding the advice letter. If the Commission has not issued an order regarding the advice letter by the end of the first suspension period, the suspension period is automatically extended for an additional 180 days, or until the Commission issues an order regarding the advice letter, whichever date is earlier.
7. Written notice of an initial suspension shall be issued to the filer of the advice letter by fax, mail, or e-mail no later than when the advice letter otherwise could become effective by operation of law, and the suspension shall be effective as of the date the notice is issued.
8. Any time staff initiates the suspension of an advice letter, staff shall notify the filer of the suspension and post notice of the suspension on the Commission's Daily Calendar. The notice may be issued by fax, mail, or e-mail.
9. Initial suspensions become effective on the date the notice is issued to the filer of the advice letter, whether or not the notice has on that date been posted on the Commission's Daily Calendar. Similarly, automatic extensions become effective automatically when an initial suspension period ends before the Commission has issued an order regarding an advice letter, whether or not notice of the automatic suspension is posted on the Daily Calendar.
10. Where an initial suspension period is about to expire prior to Commission action regarding an advice letter, staff shall issue a notice of the additional 180 day suspension period that will automatically become effective if the Commission has not issued an order regarding the advice letter prior to the end

of the first suspension period. Notice of any suspension extension shall be issued to the advice letter filer by fax, mail, or e-mail and posted on the Commission's Daily Calendar. The notice of the automatic second suspension period is dictated by courtesy, and is not required before the second suspension period may become effective.

11. Suspension notices shall include: 1) the dates the suspension begins and ends; 2) the grounds for the suspension; and 3) in the case of initial suspensions, notice that the suspension will automatically be extended for an additional 180 days if the Commission has not issued an order regarding the advice letter by the date the first suspension period ends.
12. The provisions of this Resolution will be superseded by any conflicting requirements in any Commission decision issued in the GO 96-A Rulemaking or any other appropriate Commission proceeding.

The Executive Director shall serve a copy of this resolution on any interested parties that filed comments on the draft resolution.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting of March 7, 2001, and that the following Commissioners approved it.

WESLEY M. FRANKLIN
Executive Director